

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALICIA CUETO MELENDEZ,

Plaintiff,

vs.

No.

ISRAEL ANTONIO DEMOULIN, and
SWIFT TRANSPORTATION CO. OF ARIZONA LLC,

Defendants.

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT FOR PERSONAL INJURY**

COME NOW Defendants, Israel Antonio De Moulin and Swift Transportation Co. of Arizona, LLC, (hereinafter "Swift") (collectively "Defendants") by and through their attorneys of record, YLAW, P.C. (S. Carolyn Ramos and Brett C. Eaton), and for their Answer to Plaintiff's Complaint for Personal Injury (hereinafter "Complaint"), respectfully state as follows:

PARTIES AND JURISDICTION

1. Defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in the second Paragraph 1 of Plaintiff's Complaint.
2. Defendants admit the allegations contained in Paragraph 2 of Plaintiff's Complaint.
3. Defendants admit Swift is a foreign limited liability company, involved in interstate trucking, with its principal place of business in Arizona. Defendant Swift states any remaining allegations contained within Paragraph 3 are legal conclusion, to which no response is required, and places its denial on that basis.

4. Defendants admit Defendant De Moulin was an employee of Swift at the time of the accident that is at issue in this case.

5. Defendants admit the allegations contained in Paragraph 5 of Plaintiff's Complaint.

STATEMENT OF FACTS

6. Defendants reallege and incorporate by reference the previous responses to paragraphs as if fully asserted herein.

7. Upon information and belief Defendants admit Plaintiff was a passenger in a vehicle driver by Patricia Baeza on westbound I-10 in Dona Ana County, New Mexico.

8. Defendants admit that Mr. De Moulin was travelling westbound on I-10. Defendants deny any and all remaining allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendants admit that their vehicle came into contact with Plaintiff's vehicle while attempting to change lanes. Defendants deny any and all remaining allegations contained in Paragraph 9 of Plaintiff's Complaint.

10. Defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in the second Paragraph 10 of Plaintiff's Complaint, and placing their denials on that basis, deny the allegations and demand strict proof thereof.

COUNT I: Negligence and Negligence *Per Se*
(Defendant Israel Antonio De Moulin)

11. Defendants deny each and every allegation contained in Paragraph 11 of Plaintiff's Complaint.

12. Defendants deny each and every allegation contained in Paragraph 12 of Plaintiff's Complaint.

COUNT II: Respondeat Superior and Vicarious Liability
(Defendant Swift Transportation)

13. In response to the second Paragraph 11 of Plaintiff's Complaint,¹ Defendants reallege and incorporate by reference the previous responses to paragraphs as if fully asserted herein.

14. In response to the second Paragraph 12 of Plaintiff's Complaint,² Defendants state the allegations are legal conclusions, to which no response is required, and places its denial on that basis. Defendants admit Swift was engaged in business in the state of New Mexico.

15. Defendants admit Mr. De Moulin was an employee at the time of the accident. Any remaining allegations in the misnumbered Paragraph 13 of Plaintiff's Complaint are legal conclusions, to which no response is required, and places its denial on that basis.

COUNT III: Negligent Entrustment
(Swift Transportation)

16. Defendants reallege and incorporate by reference the previous responses to paragraphs as if fully asserted herein.

17. In response to the misnumbered Paragraph 15 of Plaintiff's Complaint, Defendants state the allegations are an incorrect legal conclusion and incorrect statement of the duty owed by Swift, to which no response is required, and places its denial on that basis.

18. Defendants deny each and every allegation contained in the misnumbered Paragraph 16 of Plaintiff's Complaint.

19. Defendants deny each and every allegation contained in the misnumbered Paragraph 17 of Plaintiff's Complaint.

¹ Plaintiff's Complaint repeats Paragraph number 11 and 12.

² Plaintiff's Complaint repeats Paragraph number 11 and 12.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails, in whole or in part, to state a claim upon which relief can be granted.
2. As a separate and alternative affirmative defense, Defendants state that no act or omission on their part was any cause of the damages about which Plaintiff complains.
3. As a separate and alternative affirmative defense, Defendants state that if they were negligent in any way, which is specifically denied, then their negligence must be compared with that of the Plaintiff or others under the doctrine of comparative fault.
4. As a separate and alternative affirmative defense, Defendants state that to the extent Plaintiff has failed to mitigate the damages requested in their Complaint, any recovery must be reduced by any such failure.
5. As a separate and alternative affirmative defense, Defendants state Plaintiff has failed to state sufficient facts upon which to base any claim for attorney's fees, costs, pre-judgment or post-judgment interest.

Defendants reserve the right to assert additional affirmative defenses as discovery progresses and additional facts are made known.

WHEREFORE Defendants Israel Antonio De Moulin and Swift Transportation Co. of Arizona, LLC, having fully answered Plaintiff's Complaint for Personal Injury, pray that the action against them be dismissed, with prejudice, for reasonable fees and costs incurred in defending this action, and for such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Defendants Israel Antonio De Moulin and Swift Transportation Company of Arizona, LLC demand a jury trial on all issues to be properly presented to the jury.

Respectfully Submitted,

YLAW, P.C.

/s/ Brett C. Eaton

S. Carolyn Ramos
Brett C. Eaton
P.O. Box 3170
Albuquerque, NM 87190-3170
Telephone: (505) 266-3995
cramos@ylawfirm.com
beaton@ylawfirm.com
*Attorneys for Defendants,
Israel Antonio De Moulin and
Swift Transportation Co. of
Arizona, LLC*

I HEREBY CERTIFY that on the 9th day of February 2022, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Raul A. Lopez
raulalopezlaw@outlook.com

/s/ Brett C. Eaton
S. Carolyn Ramos
Brett C. Eaton